NOTES OF CASES.

NOTARIES PUBLIC—DUTY TO GIVE NOTICE OF PROTEST—LIABILITY.—Giving notice of dishonor of protested paper is held, in *Williams* v. *Parks* (Neb.), 56 L. R. A. 759, to be, in the absence of contrary instructions, an official duty of a notary public, for neglect of which an action is maintainable upon his official bond by the party injured.

DEDICATION—PIOUS USES—CEMETERIES.—Real estate platted into lots and blocks and dedicated as a public cemetery, and appropriated and used exclusively for burial purposes, is held, in *First National Bank* v. *Hazels* (Neb.), 56 L. R. A. 765, to be exempt from execution and forced sale.

The same principle seems applicable to private cemeteries. See *Benn* v. *Hatcher*, 81 Va. 26, 59 Am. Rep. 645; *Colbert* v. *Shepherd*, 89 Va. 401.

ATTORNEY AND CLIENT—EQUITABLE SUPERVISION OF CONTRACTS BETWEEN.—Independent advice is held, in *Kidd* v. *Williams* (Ala.), 56 L. R. A. 879, not to be necessary to enable a client to effect a binding settlement with his attorney concerning services already rendered, where the client is in a position to form an entirely free and unfettered judgment, independent altogether of any sort of control.

See *Thomas* v. *Turner*, 87 Va. 1; *Cullop* v. *Leonard*, 92 Va. 256.

SUNDAY AS DIES NON—FILING COMPLAINT ON SUNDAY.—A complaint filed on Sunday and a summons issued by the clerk of the court is held in *Havens* v. *Stiles* (Id.), 56 L. R. A. 736, to be a ministerial act, and not prohibited by a statute forbidding transaction of judicial business on Sunday. It is difficult to reconcile this decision with the common law rule that Sunday is *dies non juridicus*. See *Lee* v. *Willis*, 99 Va. 16. A note to the latter case in 6 Va. Law Reg. 691, discusses the Sunday laws of Virginia, both as to judicial proceedings and contracts.

STATUTE OF LIMITATIONS—REPELLED BY FRAUD OF PRINCIPAL—EFFECT AS TO SURETY.—A surety on the bond of an officer of a corporation is held in *McMullen* v *Winfield Bldg. & L. Assn.* (Kan.), 56 L. R. A. 924, to have no right to invoke the aid of the statute of limitations against liability thereon, on the ground that he was innocent of the fraud, where the statute does not begin to run in favor of the principal, because of his fraud in concealing his defalcations.

The general subject of the statute of limitations as affecting the claims of sureties against their principal, or against co-sureties, is discussed in 6 Va. Law Reg. 838.

CORPORATIONS—RIGHT TO EXCLUSIVE USE OF NAME—INJUNCTION.—A local incorporation of a Young Women's Christian Association, affiliated with the international conference, is held, in *International Committee of Young Women's Christian Associations* v. *Young Women's Christian Association* (Ill.), 56 L. R. A. 888, to be entitled to enjoin the use, by an independent organization

subsequently incorporated, of a similar name for the purpose of leading the public, from whom it expects support by way of donations, to believe that it represents the former association.

As to protection of corporate names against infringement by subsequently incorporated associations, see *American Clay Mfg. Co.* v. *American Clay Mfg. Co. of N. J.* (Pa.), 47 Atl. 936; 6 Va. Law Reg. 795.

FIDUCIARY BONDS—LIABILITY OF SUBSTITUTED SURETIES.—Sureties on a guardian's bond, taken upon motion of a surety on a former bond for the purpose of procuring his release, are held, in *Abshire* v. *Salyer* (Ky.), 56 L. R. A. 936, to be liable, equally with the surety on the former bond, for past as well as future defalcation of the guardian, although the motion seeks to relieve the former surety from future liability only.

The subject is regulated by statute in Virginia. With us, where a *new* bond is given, the sureties in the old bond are discharged from future liability; if an *additional* bond be given, the old sureties remain liable for past defaults, while as to the future both sets of sureties become jointly liable. Va. Code, sec. 179.

CRIMINAL LAW—COMMENT OF PROSECUTING ATTORNEY ON FAILURE OF ACCUSED TO TESTIFY.—Where a State's attorney has stated in his closing argument that the accused had seen fit to avail himself of his privilege not to go upon the stand, and the presiding judge at once said to the attorney that he ought not to have referred to the fact; that the statute provided that the jury shall pay no attention to it; that there was no reason why the respondent should testify; that the State must make out its case, and that the fact that the respondent had not testified could not help the State's case at all; it was *Held*, That the action of the trial court cured the error. *State* v. *Young* (Vt.), 52 Atl. 1047. Citing *Magoon* v. *R. R. Co.*, 67 Vt. 177; *Machine Co.* v. *Holden*, 73 Vt. 396.

We have recently noted a similar ruling by the same court: *Lockwood* v. *Fletcher*, 52 Atl. 119, 8 Va. Law Reg. 383. An examination of the authorities discloses a wide difference of opinion among the courts of the several States. If the question has been ruled upon in Virginia, the decision has escaped our attention. The Supreme Court of the United States, in *Wilson* v. *United States*, 149 U. S. 60, recognized the ruling of the principal case, namely, that if the trial court promptly and unequivocally directed the jury to disregard the remarks of the prosecuting attorney, a judgment of conviction would not be reversed; but it did reverse the judgment in that case because the presiding judge had said only, "I suppose the counsel should not comment upon the defendant not taking the stand."

HEARSAY EVIDENCE—WAIVER OF OBJECTION—PROBATIVE FORCE.—In an action against a railway company to recover damages for personal injuries, defendant was permitted, without objection, to introduce hearsay testimony as to declarations of the engineer, made after the accident. These declarations, if given the probative force of ordinary sworn testimony, were sufficient to authorize a peremptory instruction to the jury to find for the defendant, and the lower court instructed accordingly. *Held*, that it was error to attach any probative force to such hearsay testimony, standing alone, even though introduced